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Director's Office
Group 3700

In re application of
Chan-hoon Park
Application No. 09/484,051
Filed: January 18, 2000

: DECISION ON
: PETITION UNDER
: 37 CFR 1.181
:

This is a decision on the petition filed on September 3, 2002 requesting that the finality of the June 5, 2002 office action be withdrawn.

The petition is granted.

Petitioner points out that the examiner applied a new grounds of rejection to amended claim 8 (limitations from original claims 8, 16, 17, and 23) and new claim 24 (claim 6 rewritten in independent form) in his final office action of June 5, 2002 that were not necessitated by any claim amendment and requests that the finality of the office action be withdrawn.

MPEP 706.07(a) states in part:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

As stated in 37 CFR 1.181(f), any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. While petitioner did not file his petition within two months of the final office action, this situation warrants a review of the examiner's office action. Such consideration should not be normally expected for petitions filed outside the two month time period.

A review of the June 5, 2002 final office action reveals that at least amended claim 8 was rejected over a new ground of rejection that was not necessitated by applicant's amendment of claims nor based on information submitted in an information disclosure statement as set forth in MPEP 706.07(a). The current limitations of claim 8 were found in claims 8, 16, 17, and 23 as originally filed. The current rejection of claim 8 (Japanese Reference ('722) in view of Akachi) was applied to claims 8 and 23 but not to claims 16 and 17 in the first office action mailed on

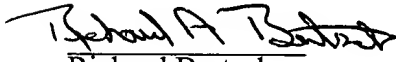
Application No. 09/484,051
Art Unit: 3743

Page 2

October 5, 2001. Since this rejection could have been applied in the first office action to claims 16 and 17, the rejection was not necessitated by amendment. The finality of the office action is withdrawn.

The application is being forwarded to the examiner for action not inconsistent with this decision.

Summary: Petition Granted


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